

AMENDED IN ASSEMBLY JULY 23, 2004

AMENDED IN SENATE APRIL 1, 2004

SENATE BILL

No. 1881

**Introduced by Committee on Revenue and Taxation (Senators
Cedillo (Chair), Alpert, Bowen, and Burton)**

February 26, 2004

An act to amend Sections ~~6459 and 6480.1~~ 6459, 6480.1, 43152.14, 43201, 43350, 45351, 46156, 46301, 50120.1, 55061, and 55101 of, to amend and renumber Section 6480.3 of, and to repeal Section 6451.5 of, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1881, as amended, Committee on Revenue and Taxation. Sales and use tax: prepayments: extensions: due dates: exemption certificate.

The Sales and Use Tax Law requires suppliers and wholesalers of motor vehicle fuel, aircraft jet fuel, and diesel fuel to collect a prepayment of sales tax based upon 80% of the combined state and local sales tax rate established by specified provisions of law.

This bill would include the sales tax rate established by recently enacted provisions of law within the provisions upon which the prepayments are based.

The Sales and Use Tax Law allows the State Board of Equalization for good cause to extend the time for making any return or paying any amount required to be paid under that law by certain taxpayers who are unpaid creditors of the state. That law provides that any extension shall expire no later than the last day of the month in which the State Budget is adopted or one month from the due date of the return, whichever is later.

This bill would provide that the extension shall expire no later than the last day of the month following the month in which the State Budget is adopted or one month from the due date of the return, whichever is later.

The Sales and Use Tax Law requires that the use taxes imposed by that law with respect to the storage, use, or other consumption in this state of tangible personal property are due and payable by the purchaser on or before the 15th day of the 4th month following the taxable year, as defined, in which the storage, use, or consumption of the property first becomes taxable.

This bill would delete redundant provisions relating thereto.

The Sales and Use Tax Law authorizes a qualified person, as defined, to issue an exemption certificate to a seller of diesel fuel with respect to certain diesel fuel that is exempt from sales and use tax.

This bill would make a technical, nonsubstantive change to those provisions.

The existing Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention, and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, and Fee Collection Procedures Law, govern the administration and collection of various fees and taxes. Existing law requires that the State Board of Equalization make a determination if the collection of an amount of fee or tax pursuant to those laws will be jeopardized by delay, as specified. Existing law also sets forth the administration and collection of these taxes and fees.

This bill would delete obsolete cross-references and make conforming and clarifying changes to those laws with respect to collection methods, penalty relief, and notices of determination.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION.~~ SECTION 1. Section 6451.5 of the Revenue and
- 2 Taxation Code is repealed.
- 3 SEC. 2. Section 6459 of the Revenue and Taxation Code is
- 4 amended to read:
- 5 6459. (a) The board for good cause may extend for not to
- 6 exceed one month the time for making any return or paying any
- 7 amount required to be paid under this part. The extension may be



1 granted at any time provided a request therefor is filed with the
2 board within or prior to the period for which the extension may be
3 granted.

4 Any person to whom an extension is granted shall pay, in
5 addition to the tax, interest at the modified adjusted rate per month,
6 or fraction thereof, established pursuant to Section 6591.5, from
7 the date on which the tax would have been due without the
8 extension until the date of payment.

9 (b) The board may grant an extension for more than one month
10 if both of the following conditions occur:

11 (1) A budget for the state has not been adopted by July 1.

12 (2) The person requesting the extension is a creditor of the state
13 who has not been paid because of the state's failure to timely adopt
14 a budget.

15 Any extension granted under this subdivision shall expire no
16 later than the last day of the month following the month in which
17 the budget is adopted or one month from the due date of the return
18 or payment, whichever comes later.

19 Any person to whom an extension has been granted under this
20 subdivision shall pay, in addition to the tax, interest at the modified
21 adjusted rate per month, or fraction thereof, established pursuant
22 to Section 6591.5, from the date on which the tax would have been
23 due without the extension until the date of payment. However, no
24 interest shall be due on that portion of the payment equivalent to
25 the amount due to the person from the state on the due date of the
26 payment.

27 SEC. 3. Section 6480.1 of the Revenue and Taxation Code is
28 amended to read:

29 6480.1. (a) At any time that motor vehicle fuel tax or diesel
30 fuel tax is imposed or would be imposed, but for the dyed diesel
31 fuel exemption in paragraph (1) of subdivision (a) of Section
32 60100, or the train operator exemption in paragraph (7) of
33 subdivision (a) of Section 60100 or paragraph (11) of subdivision
34 (a) of Section 7401, or, pursuant to subdivision (f) of Section 6480,
35 would be deemed to be imposed, on any removal, entry, or sale in
36 this state of motor vehicle fuel, aircraft jet fuel, or diesel fuel, the
37 supplier shall collect prepayment of retail sales tax from the person
38 to whom the motor vehicle fuel, aircraft jet fuel, or diesel fuel is
39 sold. However, if no sale occurs at the time of imposition of motor
40 vehicle fuel tax or diesel fuel tax, the supplier shall prepay the

1 retail sales tax on that motor vehicle fuel, aircraft jet fuel, or diesel
2 fuel. The prepayment required to be collected by the supplier
3 constitutes a debt owed by the supplier to this state until paid to the
4 board, until satisfactory proof has been submitted to prove that the
5 retailer of the fuel has paid the retail sales tax to the board, or until
6 a supplier or wholesaler who has consumed the fuel has paid the
7 use tax to the board. Each supplier shall report and pay the
8 prepayment amounts to the board, in a form as prescribed by the
9 board, in the period in which the fuel is sold. On each subsequent
10 sale of that fuel, each seller, other than the retailer, shall collect
11 from his or her purchaser a prepayment computed using the rate
12 applicable at the time of sale. Each supplier shall provide his or her
13 purchaser with an invoice for, or other evidence of, the collection
14 of the prepayment amounts which shall be separately stated
15 thereon.

16 (b) (1) A wholesaler shall collect prepayment of the retail sales
17 tax from the person to whom the motor vehicle fuel, aircraft jet
18 fuel, or diesel fuel is sold. Each wholesaler shall provide his or her
19 purchaser with an invoice for or other evidence of the collection
20 of the prepayment amounts, which shall be separately stated
21 thereon.

22 (2) Each wholesaler shall report to the board, in a form as
23 prescribed by the board and for the period in which the motor
24 vehicle fuel, aircraft jet fuel, or diesel fuel was sold, all of the
25 following:

26 (A) The number of gallons of fuel sold and the amount of sales
27 tax prepayments collected by the wholesaler.

28 (B) The number of tax-paid gallons purchased and the amount
29 of sales tax prepayments made by the wholesaler.

30 (C) In the event that the amount of sales tax prepayments
31 collected by the wholesaler is greater than the amount of sales tax
32 prepayments made by the wholesaler, then the excess constitutes
33 a debt owed by the wholesaler to the state until paid to the board,
34 or until satisfactory proof has been submitted that the retailer of the
35 fuel has paid the tax to the board.

36 (c) A supplier or wholesaler who pays the prepayment and
37 issues a resale certificate to the seller, but subsequently consumes
38 the motor vehicle fuel, aircraft jet fuel, or diesel fuel, shall be
39 entitled to a credit against his or her sales and use taxes due and
40 payable for the period in which the prepayment was made,

1 provided that he or she reports and pays the use tax to the board on
2 the consumption of that fuel.

3 (d) The amount of a prepayment paid by the retailer or a
4 supplier or wholesaler who has consumed the motor vehicle fuel,
5 aircraft jet fuel, or diesel fuel to the seller from whom he or she
6 acquired the fuel shall constitute a credit against his or her sales
7 and use taxes due and payable for the period in which the sale was
8 made. Failure of the supplier or wholesaler to report prepayments
9 or the supplier's or wholesaler's failure to comply with any other
10 duty under this article shall not constitute grounds for denial of the
11 credit to the retailer, supplier, or wholesaler, either on a temporary
12 or permanent basis or otherwise. To be entitled to the credit, the
13 retailer, supplier, or wholesaler shall retain for inspection by the
14 board any receipts, invoices, or other documents showing the
15 amount of sales tax prepaid to his or her supplier, together with the
16 evidence of payment.

17 (e) The rate of the prepayment required to be collected during
18 the period from July 1, 1986, through March 31, 1987, shall be
19 four cents (\$0.04) per gallon of motor vehicle fuel distributed or
20 transferred.

21 (f) On April 1 of each succeeding year, the prepayment rate per
22 gallon for motor vehicle fuel, rounded to the nearest one-half of
23 one cent (\$0.005), of the required prepayment shall be established
24 by the board based upon 80 percent of the combined state and local
25 sales tax rate established by Sections 6051, 6051.2, 6051.3,
26 6051.5, 7202, and 7203.1, and Section 35 of Article XIII of the
27 California Constitution on the arithmetic average selling price
28 (excluding sales tax) as determined by the State Energy Resources
29 Conservation and Development Commission, in its latest
30 publication of the "Quarterly Oil Report," of all grades of
31 gasoline sold through a self-service gasoline station. In the event
32 the "Quarterly Oil Report" is delayed or discontinued, the board
33 may base its determination on other sources of the arithmetic
34 average selling price of gasoline. The board shall make its
35 determination of the rate no later than November 1 of the year prior
36 to the effective date of the new rate. Immediately upon making its
37 determination and setting of the rate, the board shall each year, no
38 later than January 1, notify by mail every supplier, wholesaler, and
39 retailer of motor vehicle fuel. In the event the price of fuel
40 decreases or increases, and the established rate results in

1 prepayments which consistently exceed or are significantly lower
2 than the retailers' sales tax liability, the board may readjust the
3 rate.

4 (g) On April 1 of each succeeding year, the prepayment rate per
5 gallon for aircraft jet ~~fuel~~ *fuel*, rounded to the nearest one-half of
6 one cent (\$0.005), shall be established by the board based upon 80
7 percent of the combined state and local sales tax rate established
8 by Sections 6051, 6051.2, 6051.3, 6051.5, 7202, and 7203.1, and
9 Section 35 of Article XIII of the California Constitution on the
10 arithmetic average selling price (excluding sales and state excise
11 tax) as determined by the board. The board shall make its
12 determination of the rate no later than November 1 of the year prior
13 to the effective date of the new rate. The rate of the prepayment
14 required to be collected for aircraft jet fuel shall be equal to 80
15 percent of the arithmetic average selling price of aircraft jet fuel
16 as specified by industry publications. Immediately upon making
17 its determination and setting of the rate, the board shall each year,
18 no later than January 1, notify by mail every supplier, wholesaler,
19 and retailer of aircraft jet fuel. In the event the price of aircraft jet
20 fuel decreases or increases, and the established rate results in
21 prepayments that consistently exceed or are significantly lower
22 than the retailers' sales tax liability, the board may readjust the
23 rate.

24 (h) On April 1 of each succeeding year, the prepayment rate per
25 gallon for diesel ~~fuel~~ *fuel*, rounded to the nearest one-half of one
26 cent (\$0.005), shall be established by the board based upon 80
27 percent of the combined state and local sales tax rate established
28 by Sections 6051, 6051.2, 6051.3, 6051.5, 7202, and 7203.1, and
29 Section 35 of Article XIII of the California Constitution on the
30 arithmetic average selling price (excluding sales and state excise
31 tax) as determined by the board. The board shall make its
32 determination of the rate no later than November 1 of the year prior
33 to the effective date of the new rate. The rate of the prepayment
34 required to be collected for diesel fuel shall be equal to 80 percent
35 of the arithmetic average selling price of diesel fuel as specified by
36 industry publications. Immediately upon making its determination
37 and setting of the rate, the board shall each year, no later than
38 January 1, notify by mail every supplier, wholesaler, and retailer
39 of diesel fuel. In the event the price of diesel fuel decreases or
40 increases, and the established rate results in prepayments that

consistently exceed or are significantly lower than the retailers' sales tax liability, the board may readjust the rate.

(i) (1) Notwithstanding any other provision of this section, motor vehicle fuel sold by a supplier or wholesaler to a qualified purchaser who, pursuant to a contract with the State of California or its instrumentalities, resells that fuel to the State of California or its instrumentalities shall be exempt from the prepayment requirements.

(2) A qualified purchaser who acquires motor vehicle fuel for subsequent resale to the State of California or its instrumentalities pursuant to this subdivision shall furnish to the supplier or wholesaler from whom the fuel is acquired an exemption certificate, completed in accordance with any instructions or regulations as the board may prescribe. The supplier or wholesaler shall retain the certificate in his or her records in support of the exemption. To qualify for the prepayment exemption, both of the following conditions shall apply:

(A) The qualified purchaser does not take possession of the fuel at any time.

(B) The fuel is delivered into storage tanks owned or leased by the State of California or its instrumentalities via facilities of the supplier or wholesaler, or by common or contract carriers under contract with the supplier or wholesaler.

(3) For purposes of this subdivision, "qualified purchaser" means a wholesaler who does not have or maintain a storage facility or facilities for the purpose of selling motor vehicle fuel.

SEC. 4. Section 6480.3 of the Revenue and Taxation Code, as added by Chapter 446 of the Statutes of 2002, is amended and renumbered to read:

6480.9. (a) A person qualified under subdivision (b) may issue a certificate to a seller with respect to the amount of sales tax required to be prepaid pursuant to Section 6480.1 when purchasing diesel fuel from the seller. The certificate shall be completed in accordance with any instructions or regulations as the board may prescribe, and shall clearly specify that the person will purchase the volume of diesel fuel that the person reasonably expects he or she will sell that qualifies for the exemption under Section 6357.1. A seller that receives a properly completed certificate from a person qualified under subdivision (b) shall not be required to collect the prepayment of the retail sales tax otherwise required in

1 Section 6480.1 on that volume of the diesel fuel sold pursuant to
2 the certificate.

3 (b) A person is qualified for purposes of this section if both of
4 the following conditions are met:

5 (1) The person sold diesel fuel that was used by the consumer
6 in a manner that qualified, or would have qualified for an
7 exemption under Section 6357.1, and in the prior year, those sales
8 totaled more than 25 percent of the person's total taxable sales.

9 (2) The person's sales consist primarily of either bulk
10 deliveries of fuel or of fuel sales through a cardlock, keylock, or
11 other unattended mechanism, or both. For purposes of the
12 preceding sentence, "bulk deliveries" means transfers of fuel into
13 storage tanks of 500 gallons or more.

14 (c) A person issuing a certificate pursuant to this section is
15 liable for sales tax that is imposed under the Bradley-Burns
16 Uniform Local Sales and Use Tax Law (Part 1.5 (commencing
17 with Section 7200)) or in accordance with the Transactions and
18 Use Tax Law (Part 1.6 (commencing with Section 7251)) and sales
19 tax that is imposed under Section 6051.2 or 6201.2, or under
20 Section 35 of Article XIII of the California Constitution.

21 (d) A person issuing a certificate pursuant to this section shall
22 be liable for sales tax on any portion of the gross receipts derived
23 from the sale of fuel that is not sold in a manner that qualifies for
24 an exemption under Section 6357.1.

25 (e) A person liable for the sales tax under subdivision (c) or (d)
26 of this section shall report and pay that sales tax with the return for
27 the reporting period in which the person sells the fuel.

28 (f) Any person who gives a certificate pursuant to this section
29 for purchases of diesel fuel that he or she knows at the time of
30 purchase do not qualify for the exemption from the prepayment
31 pursuant to this section for the purpose of evading payment of the
32 prepayment of the retail sales tax is guilty of a misdemeanor
33 punishable as provided in Section 7153. In addition, the person
34 shall be liable to the state for a penalty of one thousand dollars
35 (\$1,000) for each certificate issued for personal gain or to evade
36 the payment of taxes.

37 *SEC. 5. Section 43152.14 of the Revenue and Taxation Code*
38 *is amended to read:*

39 43152.14. The fee imposed pursuant to Section 105310 of the
40 Health and Safety Code, that is collected and administered under

Section 43057, is due and payable on or before April 1 of each year for the previous calendar year. ~~A feepayer shall file a return in the form as prescribed by the board, which may include, but not be limited to, electronic media. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.~~

SEC. 6. *Section 43201 of the Revenue and Taxation Code is amended to read:*

43201. (a) If the board is dissatisfied with the return or report filed or the amount of tax paid to the state by any taxpayer, or if no return or report has been filed or no payment or payments of the taxes have been made to the state by a taxpayer, the board may compute and determine the amount to be paid, based upon any information available to it. *In addition, where the board is authorized to collect a tax for another state agency, the board may issue a notice of determination or similar billing document for collection of the tax.* One or more additional determinations may be made of the amount of tax due for one, or for more than one, period. The amount of tax so determined shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date the amount of the tax, or any portion thereof, became due and payable until the date of payment. In making a determination, the board may offset overpayments for a period or periods against underpayments for another period or periods and against the interest and penalties on the underpayments.

(b) If any part of the deficiency for which a determination of an additional amount due ~~is made~~ is found to have been occasioned by negligence or intentional disregard of this part or authorized regulations, a penalty of 10 percent of the amount of the determination shall be added, plus interest as provided above.

(c) If any part of the deficiency for which a determination of an additional amount due ~~is made~~ is found to be occasioned by fraud or an intent to evade this part or authorized regulations, a penalty of 25 percent of the amount of the determination shall be added, plus interest as provided in subdivision (a).

(d) The board shall give to the taxpayer written notice of its determination. The notice shall be placed in a sealed envelope, with postage paid, addressed to the taxpayer at his or her address as it appears in the records of the board. The giving of notice shall be deemed complete at the time of the deposit of the notice in a

1 United States Post Office, or a mailbox, sub-post office, substation
2 or mail chute, or other facility regularly maintained or provided by
3 the United States Postal Service without extension of time for any
4 reason. In lieu of mailing, a notice may be served personally by
5 delivering to the person to be served, and service shall be deemed
6 complete at the time of delivery. Personal service to a corporation
7 may be made by delivery of a notice to any person designated in
8 the Code of Civil Procedure to be served for the corporation with
9 summons and complaint in a civil action.

10 *SEC. 7. Section 43350 of the Revenue and Taxation Code is*
11 *amended to read:*

12 43350. If the board believes that the collection of any amount
13 of tax will be jeopardized by delay, it shall thereupon make a
14 determination of the amount of tax due, noting that fact upon the
15 determination, and the amount of tax shall be immediately due and
16 payable. If the amount of the tax, interest, and penalty specified in
17 the jeopardy determination is not paid, or a petition for
18 redetermination is not filed, within 10 days after the service upon
19 the taxpayer of notice of the determination, the determination
20 becomes final, and the delinquency penalty and interest provided
21 in ~~Sections~~ Section 43155 and 43156 shall attach to the amount of
22 tax specified therein.

23 *SEC. 8. Section 45351 of the Revenue and Taxation Code is*
24 *amended to read:*

25 45351. If the board finds and determines that the collection of
26 any amount of fee will be jeopardized by delay, it shall thereupon
27 make a determination of the amount of fee due, noting that fact
28 upon the determination, and the amount of the fee shall be
29 immediately due and payable. If the amount of the fee, interest,
30 and penalty specified in the jeopardy determination is not paid, or
31 a petition for redetermination is not filed, within 10 days after the
32 service upon the taxpayer of notice of the determination, the
33 determination becomes final, and the delinquency penalty and
34 interest provided in ~~Sections~~ Section 45153 and 45154 shall attach
35 to the amount of fee specified therein.

36 *SEC. 9. Section 46156 of the Revenue and Taxation Code is*
37 *amended to read:*

38 46156. (a) If the board finds that a person's failure to make
39 a timely return or payment is due to reasonable cause and
40 circumstances beyond the person's control, and occurred

notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 46154, ~~46154.1~~, 46160, 46251, and 46356.

(b) Except as provided in subdivision (c) any person seeking to be relieved of the penalty shall file with the board a statement, under penalty of perjury, setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

SEC. 10. Section 46301 of the Revenue and Taxation Code is amended to read:

46301. If the board believes that the collection of any amount of fee will be jeopardized by delay, it shall thereupon make a determination of the amount of fee due, noting that fact upon the determination, and the amount of fee shall be immediately due and payable. If the amount of the fee, interest, and penalty specified in the jeopardy determination is not paid, or a petition for redetermination is not filed, within 10 days after the service upon the taxpayer of notice of the determination, the determination becomes final, and the delinquency penalty and interest provided in ~~Sections~~ Section 46154 and ~~46155~~ shall attach to the amount of fee specified therein.

SEC. 11. Section 50120.1 of the Revenue and Taxation Code is amended to read:

50120.1. If the board determines that the collection of any amount of fee will be jeopardized by delay, it shall thereupon make a determination of the amount of fee due, noting that fact upon the determination, and the amount of the fee shall be immediately due and payable. If the amount of the fee, interest, and penalty specified in the jeopardy determination is not paid, or a petition for redetermination is not filed, within 10 days after the service upon the feepayer of a notice of the determination, the determination becomes final, and the delinquency penalty *and interest* provided in Section 50112 ~~and the interest provided in 50112.1~~ shall attach to the amount of fee specified in the jeopardy determination.

SEC. 12. Section 55061 of the Revenue and Taxation Code is amended to read:

55061. (a) If the board is dissatisfied with the return filed or the amount of the fee paid to the state by any feepayer, or if no return has been filed or no payment of the fee has been made to the

1 state by a feepayer, the board may compute and determine the
2 amount to be paid, based upon any information available to it. *In*
3 *addition, where the board is authorized to collect a fee for another*
4 *state agency, or where the board is authorized to collect a fee under*
5 *circumstances where the feepayer is not required to file a return,*
6 *the board may issue a notice of determination or similar billing*
7 *document for collection of the fee.* One or more additional
8 determinations may be made of the amount of the fee due for one,
9 or for more than one period. The amount of the fee so determined
10 shall bear interest at the modified adjusted rate per month, or
11 fraction thereof, established pursuant to Section 6591.5, from the
12 date the amount of the fee, or any portion thereof, became due and
13 payable until the date of payment. In making a determination, the
14 board may offset overpayments for a period or periods against
15 underpayments for another period or periods and against the
16 interest and penalties on the underpayments.

17 (b) If any part of the deficiency for which a determination of an
18 additional amount due ~~is made~~ is found to have been occasioned
19 by negligence or intentional disregard of this part or authorized
20 regulations, a penalty of 10 percent of the amount of the
21 determination shall be added, plus interest as provided in
22 subdivision (a).

23 (c) If any part of the deficiency for which a determination of an
24 additional amount due is found to be occasioned by fraud or an
25 intent to evade this part or authorized regulations, a penalty of 25
26 percent of the amount of the determination shall be added, plus
27 interest as provided in subdivision (a).

28 (d) The board shall give to the feepayer written notice of its
29 determination. The notice shall be placed in a sealed envelope,
30 with postage paid, addressed to the feepayer at his or her address
31 as it appears in the records of the board. The giving of notice shall
32 be deemed complete at the time of the deposit of the notice in a
33 United States Post Office, or a mailbox, sub-post office, substation
34 or mail chute, or other facility regularly maintained or provided by
35 the United States Postal Service without extension of time for any
36 reason. In lieu of mailing, a notice may be served personally by
37 delivering to the person to be served; and service shall be deemed
38 complete at the time of delivery. Personal service to a corporation
39 may be made by delivery of a notice to any person designated in



1 the Code of Civil Procedure to be served for the corporation with
2 summons and complaint in a civil action.

3 *SEC. 13. Section 55101 of the Revenue and Taxation Code is*
4 *amended to read:*

5 55101. If the board believes that the collection of any amount
6 of the fee will be jeopardized by delay, it shall thereupon make a
7 determination of the amount of the fee due, noting that fact upon
8 the determination, and the amount of the fee shall be immediately
9 due and payable. If the amount of the fee, interest, and penalty
10 specified in the jeopardy determination is not paid, or a petition for
11 redetermination is not filed, within 10 days after the service upon
12 the feepayer of notice of determination, the determination
13 becomes final, and the delinquency penalty and interest provided
14 in ~~Sections~~ *Section 55042 and 55043* shall be attached to the
15 amount of the fee specified therein.

